IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.262 OF 2004
IN
SUMMARY SUIT NO.2197 OF 2003

Bank of India Plaintiff

versus

Dinesh K. Wagh and another Defendants

Mamta Sadh i/by V. Deshpande for plaintiff.

Ms.E.Jahangir i/by Anand Kumar & Jehangir for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 8th July 2005

PC :

1. This Summons for Judgement was placed before me for hearing and final disposal. No affidavit in reply has been filed by the defendants. However, learned advocates appearing for defendants contended that she would argue the issue of maintainability of the summary suit.

2. This is a bank suit. There does not appear to be any substantial defence to the claim of the bank. On the other hand, it is undisputed that the defendants have deposited a sum of

Rs.20,000/- to the plaintiff bank which is kept in a no lien account. I have perused the plaint and the annexures thereto. I have also heard parties. In my view, considering the averments in the plaint and that there being no defence to the claim, the plaintiff bank is entitled to a decree in it's favour. At this stage learned advocate appearing for the defendants states that the defendants are willing to deposit with the bank a sum of Rs.30,000/- in ten monthly equal instalments. She submits that the claim in the suit is Rs.77,039/- as per Exhibit-E to the plaint. The amount of Rs.20,000/- is already deposited with the bank. In addition to this amount, which defendants are agreeable to be appropriated and adjusted, a sum of Rs.50,000/- being paid in instalments as prayed, would make the total sum of Rs.50,000/- and the decree should be marked satisfied.

3. Considering the financial difficulties and at the same time bearing in mind the interests of plaintiff bank, it will be fair, just and proper to pass the following order.

4. ORDER :- A) Plaintiff bank is allowed to adjust and/or appropriate a sum of Rs.20,000/-

towards claim in the suit.

B) On the defendants depositing a sum of Rs.30,000/- of Rs.3,000/- each in ten monthly instalments, the decree would be marked satisfied.

C) First such payment shall be made on 15th August 2005 and subsequent payments on 15th of each succeeding month till the amount of Rs.30,000/- is paid off. On payment of sum of Rd.30,000/- and appropriation of Rs.20,000/- as above, the decree to stand satisfied. If defendants commit default in payment of any instalment, then the entire decreetal amount or balance thereof would become due and payable and the plaintiff bank would be at liberty to execute the decree. Refund of court fees as per rules. Computation of advocates' costs also as per rules.

(S.C.DHARMADHIKARI, J.)